

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Redesignation of the 17.7-19.7 GHz)	
Frequency Band, Blanket Licensing of)	
Satellite Earth Stations in the 17.7-20.2 GHz)	IB Docket No. 98-172
and 27.5-30.0 GHz Frequency Bands, and)	RM-9005
the Allocation of Additional Spectrum in)	RM-9118
the 17.3-17.8 GHz and 24.75-25.25 GHz)	
Frequency Bands for Broadcast Satellite)	
Service Use)	

**Opposition and Comments of
ASTROLINK International LLC**

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SUMMARY

In the *18 GHz Order*, the Commission endeavored to satisfy the spectrum requirements of multiple users of the 18 GHz band, and to adopt rules to facilitate efficient and equitable use of that spectrum by satellite and terrestrial operators. However, in many ways the *18 GHz Order* fails to strike a reasonable balance by favoring the interests of terrestrial operators over those of satellite users of the band. Accordingly, ASTROLINK International LLC (“Astrolink”) believes that while the Commission must preserve certain elements of the *18 GHz Order*, it also must reconsider other aspects of the order to redress this significant imbalance.

First, the Commission should reject the request by Winstar Communications, Inc. (“Winstar”) to rewrite the 18 GHz relocation rules in a manner that further favors terrestrial incumbents. The Commission’s mandatory relocation rules are intended to afford FSS licensees with reasonable flexibility to roll out their operations in sole primary GSO FSS spectrum while, at the same time, protecting the interests of FS operators by ensuring that they are provided with comparable facilities. However, the changes proposed by Winstar would substantially hinder the introduction of broadband satellite services by placing inappropriate and unreasonable relocation requirements on Ka-band GSO FSS systems.

Second, Astrolink supports the request of Hughes Electronics Corporation (“Hughes”) for reconsideration of the decision to designate only 220 megahertz of spectrum in the 18.58-18.8 GHz band (in addition to 500 megahertz of spectrum designated in the 19.7-20.2 GHz band) exclusively for GSO FSS use. Astrolink believes that designation of less than 250 megahertz of exclusive GSO FSS spectrum in the 18.3-18.8 GHz band provides insufficient spectrum for GSO FSS user terminals because it effectively eliminates the sole primary GSO FSS designation in the band, thereby frustrating the purpose for adopting a sole primary designation in the first instance.

Third, Astrolink supports Hughes's request to reconsider the Commission's "Legacy List" policy as unsupported, inconsistent with longstanding FCC rules and policies, and violative of the APA's notice and comment requirements. The "Legacy List" constitutes a significant departure from previous Commission policy, and unjustifiably penalizes Ka-band GSO FSS licensees in favor of FS operators that deploy systems that are not robust enough to operate under well-established FS/FSS sharing criteria.

Finally, Astrolink supports a number of clarifying changes to the *18 GHz Order* proposed by Hughes and Teledesic Corporation, including: (i) elimination of the p.f.d. limits contained in new Section 25.208(d) in sole primary GSO FSS spectrum (18.58-18.8 GHz) or, at a minimum, reinstate the prior Section 25.208(c) p.f.d. limits throughout the 18.3-18.8 GHz band; (ii) correction of new Section 25.138(a)(6) to apply the blanket licensing p.f.d. value to the 18.58-18.8 GHz band in which blanket licensing is permitted; and (iii) correction of new Section 25.145(i), which erroneously reverses the cut-off dates for grandfathered FS stations in the 18.58-18.8 GHz and 18.8-19.3 GHz bands.

However, Astrolink cannot support Hughes's request to modify the text of new Section 25.138(b) to limit application of that provision to blanket licensed earth stations only. Granting Hughes's request would eliminate any applicable operational parameters for individually licensed Ka-band earth stations, remove the requirement to coordinate individually licensed earth station operations in excess of applicable power levels with affected Ka-band satellite operators, and contravene longstanding FCC precedent that such non-conforming operations should bear the burden of coordinating with future applicants and licensees that seek to operate in conformance with applicable power levels.

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**Opposition and Comments of
ASTROLINK International LLC**

ASTROLINK International LLC (“Astrolink”), by its attorneys, hereby files this Opposition and Comments on several petitions for reconsideration of the Commission’s Report and Order in the above-referenced proceeding.¹

In the *18 GHz Order*, the Commission endeavored to satisfy the spectrum requirements of multiple users of the 18 GHz band, and to adopt rules to facilitate efficient and equitable use of that spectrum. Although Astrolink appreciates the Commission’s efforts to address the complex and difficult issues associated with access to 18 GHz spectrum, in many ways the *18 GHz Order* fails to strike a reasonable balance by favoring the interests of terrestrial operators over those of satellite users of the band. Accordingly, Astrolink believes that while the

¹ Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite Service Use, *Report and Order*, File Nos. IB Docket No. 98-172, RM-9005, RM-9118 (rel. June 22, 2000) (“*18 GHz Order*”).

Commission must preserve certain elements of the *18 GHz Order*, it also must reconsider other aspects of the order to redress this significant imbalance.

For reasons explained herein, Astrolink opposes the Petition for Clarification and Reconsideration of Winstar Communications, Inc. (“*Winstar Petition*”) and the Petition for Reconsideration of the Fixed Wireless Communication Coalition (“*FWCC Petition*”). In addition, as discussed below, Astrolink supports certain portions of, but opposes other portions of, the Petition for Partial Reconsideration of Hughes Electronics Corporation (“*Hughes Petition*”). Finally, Astrolink supports the *ex parte* submission of Teledesic Corporation (“*Teledesic Ex Parte*”).

I. THE COMMISSION SHOULD REJECT WINSTAR’S REQUEST TO REWRITE THE RELOCATION RULES

In the *18 GHz Order*, the Commission adopted rules to permit Fixed-Satellite Service (“FSS”) licensees to relocate grandfathered Fixed Service (“FS”) operators from bands designated for exclusive satellite use.² The Commission’s mandatory relocation process is intended to afford “reasonable flexibility to FSS licensees to roll out their operations in a timely and economic manner” in spectrum allocated exclusively to FSS on a primary basis.³ Winstar, however, challenges the relocation procedures adopted by the Commission and proposes a laundry list of new requirements for the relocation of FS stations by FSS licensees. Specifically, Winstar asks the Commission:

- (i) to require FSS licensees to provide relocated FS operators with replacement facilities with throughput based on the “*total* capacity of the licensed spectrum,” rather than with throughput to satisfy the FS operator’s actual use at the time of relocation;

² See *id.*, ¶¶ 76-84.

³ *Id.*, ¶ 76.

- (ii) to limit the right of FSS licensees to provide FS operators with comparable facilities using other media, such as fiber optic cable;
- (iii) to establish the right of FS operators to return to previous facilities and a twelve-month “trial period” for FS operators to determine comparability of replacement facilities; and
- (iv) to establish a voluntary negotiation period for FS relocations.⁴

Winstar’s requested changes unquestionably would frustrate the objectives of the relocation procedures adopted in the *18 GHz Order* and thus must be rejected.

First, requiring FSS licensees to provide FS replacement facilities with throughput based on the “total capacity of the licensed spectrum” makes no sense in the context of the relocation rules adopted by the Commission. In the *18 GHz Order*, the Commission made clear that an FSS licensee is obligated to relocate only the specific FS links that cause interference problems.⁵ Because relocation will be performed on a link-by-link basis, the Commission properly required FSS licensees to provide FS operators with replacement throughput to satisfy the FS operator’s actual use at the time of relocation, not the total capacity of the FS system or the licensed spectrum.

Second, Winstar requests that the Commission reconsider its decision to permit FSS licensees to relocate FS operators to other fixed microwave bands or other media, such as fiber optic cable. Winstar speculates that the provision of comparable facilities using other media such as fiber optic cable is not always a “reasonable or logical option,” suggesting that the right of FSS licensees to provide such comparable facilities somehow should be limited. However, Winstar’s itself admits that it uses fiber in its network when feasible, a fact that supports the use

⁴ See *Winstar Petition* at 5-6, 9-19.

⁵ *18 GHz Order*, ¶ 82.

of fiber as a comparable replacement facility in appropriate circumstances.⁶ Moreover, if other media are not available or otherwise are inappropriate, obviously they cannot be substituted as replacement facilities.

An FS operator can be required to relocate *only* if the new facilities are comparable in terms of existing throughput, reliability and operating costs (or the FS operator is compensated for any increase in such costs).⁷ This objective assessment is made without regard to the type of replacement facilities provided; and if the replacement facilities are not comparable, then the FS operator is not required to relocate. Thus, Winstar's concern is unfounded because a relocated FS operator will either obtain comparable facilities, as defined by the Commission, or continue to use its existing facilities. The Commission should permit all potential replacement facility options to be explored and utilized, so long as they are comparable, rather than arbitrarily excluding certain options from the outset as proposed by Winstar.

Third, the Commission should deny Winstar's request to establish a right for FS operators to return to previous facilities after a twelve-month trial period to evaluate replacement facilities provided in the context of relocation. Permitting FS operators to return to previously facilities after up to three years of negotiations and an *additional* twelve-month trial period, and after affected satellite licensees have invested considerable time and capital in providing comparable replacement facilities, would be an unworkable arrangement for it would cause unacceptable uncertainty and disruption to FSS deployment in the band. Indeed, in the *18 GHz Order*, the Commission specifically found that "[i]t would not be in the public interest to allow a right of return to relocated [FS] incumbents," because the "disruption to national, or potentially region-

⁶ *Winstar Petition* at 12.

⁷ See *18 GHz Order*, ¶ 82 and Appendix A (new Sections 101.85, 101.89 and 101.91).

wide or world-wide, satellite systems for the benefit of relatively few terrestrial fixed incumbents is infeasible.”⁸

To ensure that relocated FS operators are provided with replacement facilities that in fact are comparable, the Commission adopted new Section 101.91(d) that empowers the Commission to require an FSS licensee to further modify or replace equipment if an FS licensee demonstrates that the new facilities are not comparable to its former facilities. This provision, along with new Section 101.91(c) that establishes a reasonable period to make adjustments, determine comparability and ensure a seamless hand-off, effectively ensures that relocated FS licensees will obtain comparable facilities. Thus, the Commission has adopted other reasonable measures to see that FS operators will be accorded comparable replacement facilities. Accordingly, Winstar’s request for a right of return combined with a twelve-month trial period to evaluate the new facilities should be rejected.

Fourth, the Commission also should reject Winstar’s call for a voluntary negotiation period for FS relocations.⁹ As the Commission found in the *18 GHz Order*, Ka-band satellite licensees will require expedited access to exclusive FSS spectrum as they roll-out their service on a nationwide basis. Thus, the Commission concluded it should not adopt a voluntary negotiation process, but instead established a mandatory negotiation period of two years for non-public safety incumbents and three years for public safety incumbents.¹⁰ Astrolink supports the

⁸ See *id.*, ¶ 82.

⁹ It is unclear from its petition whether Winstar requests a voluntary negotiation period instead of, or in addition to, the mandatory negotiation period established by the Commission.

¹⁰ See *18 GHz Order*, ¶¶ 80-81. Although the negotiation periods established by the Commission are somewhat lengthy and do not include the time necessary to actually implement the replacement facilities, Astrolink accepts these periods as a reasonable accommodation to address fully the needs of incumbent users of the spectrum.

Commission's decision because the mandatory nature of negotiations, combined with the possibility of involuntary relocation to comparable facilities, give all parties substantial incentives to reach a settlement. Elimination or extension of the mandatory negotiation period, however, could undermine significantly the ability of satellite licensees to roll-out advanced broadband satellite services in this spectrum.¹¹ Thus, the Commission should decline Winstar's invitation to add or substitute a voluntary negotiation period in the context of 18 GHz relocations.

Finally, Winstar requests the Commission to clarify that FS licensees should not be required to relocate if comparable facilities are not provided.¹² The Commission specifically stated that "[t]errestrial fixed service operators are not required to relocate until the alternative facilities are available for a reasonable time to make adjustments, determine comparability and ensure a seamless hand-off."¹³ Moreover, in circumstances where an FS operator subsequently discovers that replacement facilities in fact are not comparable, new Section 101.91(d) empowers the Commission to require further modification or replacement of the equipment upon a showing of non-comparability. Thus, the requested clarification is unnecessary. Astrolink would add, however, that the determination of comparability does not lie within the unfettered discretion of the FS operator, but rather is governed by a rule of reason as informed by the definition of

¹¹ For example, Astrolink plans to launch its first satellite serving the United States in the first quarter of 2003, slightly more than two years from today. Thus, any potential delay in addressing interference from grandfathered FS stations could severely affect Astrolink's commercial operations.

¹² Winstar expressed concern that new Section 101.91(d), which permits the Commission to order further modification or replacement of facilities to the extent they are determined not to be comparable to former facilities, may be read to require FS relocation prior to the receipt of comparable facilities. *See Winstar Petition* at 6.

¹³ *18 GHz Order*, ¶ 82; *see also id.* at Appendix A (new Section 101.91(c)).

comparability adopted by the Commission. In this regard, the Commission should clarify that FSS licensees may come to the Commission to invoke mandatory relocation if an FS operator refuses to accept comparable facilities that have been provided.¹⁴

II. THE COMMISSION SHOULD ENSURE THAT SUFFICIENT SPECTRUM IS AVAILABLE FOR FSS USER TERMINALS

As described in the *Hughes Petition*, a fundamental underpinning of the Commission's Ka-band plan has been GSO FSS access to 1,000 megahertz of spectrum for ubiquitously deployed user terminals to provide broadband satellite communications services to consumers throughout the United States.¹⁵ In the *18 GHz Order*, however, the Commission designated only 220 megahertz of unshared downlink spectrum for GSO FSS use, thereby providing Ka-band GSO FSS licensees with a total of only 720 megahertz of downlink spectrum (rather than the contemplated 1,000 megahertz) for user terminals.¹⁶ Astrolink supports Hughes's request for reconsideration of this aspect of the *18 GHz Order*.

As Astrolink explained in *ex parte* comments submitted to the Commission, designation of less than 250 megahertz of exclusive GSO FSS spectrum in the 18.3-18.8 GHz band effectively eliminates the sole primary GSO FSS designation in the remainder of the band because many of the U.S. Ka-band licensees will employ wideband channels in the downlink direction. In the case of Astrolink, for example, broadband services will be provided by using

¹⁴ Winstar also requests clarification that, as the Commission stated in the *18 GHz Order*, assignments and transfers of control of FS stations do not result in loss of grandfathered co-primary status, provided that such changes do not increase interference to satellite earth stations or result in a facility that would be more costly to relocate. *Winstar Petition* at 6-8. Astrolink does not object to this requested clarification.

¹⁵ See generally *Hughes Petition* at 4-12.

continued...

250 megahertz TDM downlink channels.¹⁷ FS transmissions in the 18.55-18.58 GHz band would “pollute” the entire 250 megahertz downlink channel (from 18.55-18.8 GHz) and preclude the deployment of blanket-licensed user terminals in the band, thereby frustrating the purpose for adopting a sole primary GSO FSS designation in the first instance. Accordingly, Astrolink urges the Commission to reconsider its co-primary FS/FSS spectrum designation in the 18.3-18.58 GHz band, and to designate no less than 250 megahertz of sole primary GSO FSS spectrum in the 18.3-18.8 GHz band for use by ubiquitously deployed FSS user terminals.

In addition, Astrolink agrees with Hughes that the deletion of secondary satellite designations in the 18 GHz band is unsupported and contrary to the mandatory notice and comment provisions of the Administrative Procedure Act (“APA”).¹⁸ Astrolink was surprised to note the deletion of secondary satellite designations in the *18 GHz Order*, particularly in bands designated for satellite services only, with scant explanation of why this action was taken.¹⁹ In its pending license modification application, Astrolink requested authority to use primary NGSO FSS spectrum on a secondary basis consistent with the Commission’s band plan and Astrolink thus is affected directly by the Commission’s action.²⁰

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¹⁶ Specifically, the Commission designated the 18.58-18.8 GHz band for sole primary GSO FSS use, along with the previously designated 19.7-20.2 GHz band. The 18.3-18.58 GHz band was designated for FS and GSO FSS use on a co-primary basis.

¹⁷ See letter to Magalie Roman Salas from Raymond G. Bender, Jr. and Carlos M. Nalda, dated December 30, 1999, in IB Docket No. 98-172.

¹⁸ See *Hughes Petition* at 16-18.

¹⁹ See *18 GHz Order*, ¶57.

²⁰ See Astrolink Modification Application, File No. SAT-MOD-19971222-00200 (filed Dec. 22, 1997).

Like Hughes, Astrolink does not necessarily disagree with the Commission's deletion of secondary satellite designations in the Ka-band. However, as Hughes points out, piecemeal regulatory action creates substantial uncertainty with respect to the status of secondary satellite designations in the 19.7-20.2 GHz downlink band, the 28.35-28.6 GHz, 28.6-29.1 GHz, 29.25-29.5 GHz and 29.5-30.0 GHz uplink bands, and a secondary authorization granted to Teledesic in the 18.3-18.8 GHz band.²¹ Accordingly, Astrolink supports Hughes's call for the issuance of a further notice of proposed rulemaking to address comprehensively issues related to secondary satellite designations in the Ka-band.

Finally, Astrolink opposes the request of the Fixed Wireless Communications Coalition ("FWCC") for the Commission to reallocate the 19.26-19.3 GHz band for FS use.²² The FWCC's request is supported by nothing more than the conclusory statement that spectrum available in the paired 17.74-18.14 GHz/19.3-19.7 GHz bands is insufficient to accommodate current FS growth and relocation of FS incumbents from other bands.²³ In addition, the FWCC fails to recognize that FS links in the 19.26-19.3 GHz band have been grandfathered on a permanent basis,²⁴ and fails to address the detrimental impact of its proposal on broadband FSS

²¹ See *Hughes Petition* at 16-17.

²² See *FWCC Petition* at 4-5.

²³ See *id.* at 5.

²⁴ See *18 GHz Order*, ¶63(a)(2).

systems authorized to use the band.²⁵ Thus, the Commission should reject the FWCC's 19.26-19.3 GHz reallocation proposal.²⁶

III. THE COMMISSION SHOULD RECONSIDER ITS "LEGACY LIST" POLICY

In the *18 GHz Order*, the Commission established a "Legacy List" policy requiring Ka-band satellite licensees using the 18.3-18.8 GHz band to pay to alleviate interference experienced by FS operators whose receivers are pointed within two degrees of the GSO arc.²⁷ Payment would be required even if the satellite licensee's operations complied fully with the p.f.d. limits contained in Section 25.208(c) of the Commission's rules, which were adopted as a sharing criteria to protect FS stations from harmful interference from satellite downlinks in the band. Astrolink strongly supports Hughes's petition to reconsider this aspect of the *18 GHz Order* as unsupported, inconsistent with longstanding FCC rules and policies, and violative of the APA's notice and comment requirements.²⁸

The fundamental purpose of Section 25.208(c) was to limit power levels of satellite downlink transmissions at the Earth's surface to protect FS operations and to avoid the need for FS/FSS coordination, regardless of the azimuth and elevation angle of an FS receiver.²⁹ Indeed, the p.f.d. limits in former Section 25.208(c) have received broad international recognition and are embodied in Article S.21 of the ITU Radio Regulations. Terrestrial fixed service operators in

²⁵ Just as co-primary FS operation in the 18.55-18.58 GHz band would cause interference to GSO FSS wideband downlinks in the 18.55-18.8 GHz band, FS operations in the 19.26-19.3 GHz band would cause substantial interference to broadband downlink channels of FSS systems in the upper portion of the 18.8-19.3 GHz band.

²⁶ Astrolink takes no position with respect to the FWCC's request for the Commission to rechannelize other available primary FS spectrum in the 18 GHz band.

²⁷ See *18 GHz Order*, ¶¶ 43-47.

²⁸ See *Hughes Petition* at 12-16.

²⁹ See *id.* at 13.

the 18 GHz band have been subject to the requirements of Section 25.208(c) for many years, and are therefore presumptively on notice that they must bear the burden of any interference from satellite downlink transmissions that comply with this rule. Any illusions that FS operators would not be required to share the 18 GHz band with satellite licensees were shattered by many important regulatory developments over the past decade that firmly established that the 18 GHz band was destined for joint FS/FSS use.³⁰ Moreover, at WRC-2000, the ITU reviewed and confirmed the p.f.d. limits embodied in former Section 25.208(c) in the context of FS/NGSO FSS sharing, again without regard to the direction in which an FS receiver is pointed relative to an FSS satellite. Thus, as suggested by Hughes, the “Legacy List” constitutes a dramatic and unexplained departure from previous Commission and ITU policy, and unjustifiably penalizes Ka-band GSO FSS licensees in favor of FS operators that deploy systems that are not robust enough to operate under Section 25.208(c)’s well-established FS/FSS sharing criteria.³¹

Furthermore, the Commission failed to adopt any coordination criteria or guidelines in connection with its “Legacy List” policy. The Commission simply directs FS and FSS operators to evaluate the actual potential for interference and develop a method for resolving such interference.³² But this form of indefinite charge may lead FS operators to the incorrect conclusion that they need not accept *any* interference from FSS licensees, thereby seriously

³⁰, *See, e.g.*, In the Matters of Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, *Notice of Proposed Rulemaking*, 8 FCC Rcd 557, CC Docket No. 92-297, 8 FCC Rcd 557 (1993); In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *First Report And Order And Fourth Notice Of Proposed Rulemaking*, CC Docket No. 92-297, 11 FCC Rcd 19005 (1996).

³¹ *See Hughes Petition* at 14.

undermining the possibility of successful coordination and potentially delaying indefinitely FSS deployment in the band. To the extent the Commission pursues this “Legacy List” policy, it should establish criteria to govern FS/FSS coordination. Specifically, because the policy governs only those FS receivers pointed within two degrees of the GSO arc, the Commission should clarify that FS operators must accept at least such interference that would result if their receivers were pointed exactly two degrees away from the GSO arc, and that GSO FSS operators are responsible for alleviating no more than the difference in interference resulting from pointing the FS receiver within that two degree cut-off.

Finally, Astrolink also agrees with Hughes that adoption of the “Legacy List” policy does not comply with the notice and comment requirements of the APA.³³ The NPRM in this proceeding did not discuss the terms or substance of such a proposal, nor was any such proposal raised in comments before the Commission. Thus, from the outset, this proceeding never proposed to revise any aspect of the longstanding p.f.d. limits applicable to FS/FSS sharing in the band. Astrolink believes that failure to comply with the notice and comment requirements of the APA provides an independent basis to rescind the “Legacy List” policy.

IV. THE COMMISSION SHOULD RECONSIDER OR CORRECT CERTAIN TECHNICAL ASPECTS OF THE KA-BAND BLANKET LICENSING RULES

In its Petition for Partial Reconsideration, Hughes urges the Commission to reconsider or correct several technical aspects of the rules adopted in the *18 GHz Order*, including: (i) elimination of the p.f.d. limits contained in new Section 25.208(d) in sole primary GSO FSS spectrum (18.58-18.8 GHz) or, at a minimum, reinstate the prior Section 25.208(c) p.f.d. limits

...continued

³² See *18 GHz Order*, ¶45.

³³ See *Hughes Petition* at 15-16.

throughout the 18.3-18.8 GHz band; and (ii) correction of new Section 25.138(a)(6) to apply the blanket licensing p.f.d. value to the 18.58-18.8 GHz band in which blanket licensing is permitted.³⁴ As discussed below, Astrolink agrees with these technical changes to the Commission's rules proposed by Hughes.

With respect to Hughes's request to eliminate the p.f.d. limits in new Section 25.208(d) in the 18.58-18.8 GHz band, Astrolink agrees that removal of the p.f.d. limits would afford GSO FSS operators greater flexibility to utilize this sole primary GSO FSS spectrum. However, Astrolink also understands the Commission's desire to protect grandfathered FS stations in this band. To achieve this objective, the Commission could establish coordination procedures or modify its relocation procedures to permit GSO FSS downlink operations in excess of the applicable p.f.d. limits. For example, the Commission could require a GSO FSS licensee that seeks to operate in excess of the p.f.d. limits to coordinate with affected grandfathered FS stations, and to bear the costs associated with alleviating any additional interference to the FS stations. In addition, the Commission could extend the relocation procedures adopted in the *18 GHz Order* to cover the situation where a GSO FSS and FS operator are unable to coordinate GSO FSS operations in excess of the p.f.d. limits. Such an approach would protect the interests of grandfathered FS stations and provide necessary flexibility for GSO FSS operations in the band. Of course, because the co-primary status of grandfathered FS stations in the 18.58-18.8 GHz band sunsets ten years after the adoption of the *18 GHz Order*, any procedures established

³⁴ See *id.* at 20-23.

to protect FS stations from harmful interference from GSO FSS systems operating in the band also should sunset at that time.³⁵

Hughes further argues that the Commission inappropriately (albeit perhaps inadvertently) tightened the p.f.d. limits applicable to the 18.3-18.8 GHz band in new Section 25.208(d) and, at a minimum, should restore the original p.f.d. limits contained in former Section 25.208(c).

Astrolink strongly agrees. The *18 GHz Order* provides no justification for this significant change in the applicable p.f.d. limits, and fails to explain why it adopted more stringent p.f.d. limits for GSO FSS in the 18.3-18.8 GHz band than for satellite services in other bands shared with the FS. Further, Astrolink is unaware of any proposal to tighten the p.f.d. limits in the context of this proceeding. As a result, modification of the p.f.d. limits in the 18.3-18.8 GHz band is entirely unsupported by the record, unaccompanied by any explanation whatsoever, and violative of the APA's notice and comment requirements. Accordingly, if the Commission retains p.f.d. limits in the entire 18.3-18.8 GHz band, at a minimum it should restore the p.f.d. limits of former Section 25.208(c), which have received broad international recognition and are embodied in Article S.21 of the ITU Radio Regulations. Furthermore, as noted above, because the co-primary status of grandfathered FS stations in the 18.58-18.8 GHz band sunsets ten years after the adoption of the *18 GHz Order*, any p.f.d. limits designed to protect FS stations in that band also should sunset at that time.³⁶

³⁵ The Commission recognized in the *18 GHz Order* that procedures adopted to protect FS operations in the 18.58-18.8 GHz band should not extend beyond the applicable period of co-primary status. See *18 GHz Order* at n. 93 and n.96 (eliminating the "Legacy List" policy in the 18.58-18.8 GHz band after the sunset of FS co-primary status).

³⁶ *Id.*

Hughes also requests that the Commission add the 18.58-18.8 GHz band to the text of new Section 25.138(a)(6) to clarify that the blanket licensing p.f.d. value also applies to that band.³⁷ Astrolink supports this clarifying change.

However, Astrolink cannot support Hughes's request to modify the text of new Section 25.138(b), which permits earth station operations in sole primary GSO FSS spectrum in excess of the levels contained in Section 25.138(a) on an individually coordinated basis.³⁸ Hughes argues that the Commission should limit application of that provision to blanket licensed earth stations only.³⁹ Granting the Hughes request would eliminate any applicable operational parameters for individually licensed Ka-band earth stations, remove the requirement to coordinate individually licensed earth station operations in excess of applicable power levels with affected Ka-band satellite operators, and contravene longstanding FCC precedent that such non-conforming operations should bear the burden of coordinating with future applicants and licensees that seek to operate in conformance with applicable power levels.

Hughes suggests that Section 25.138, entitled "*Blanket Licensing Provisions of GSO FSS Earth Stations in the 18.58-18.8 GHz (space-to-Earth), 19.7-20.2 GHz (space-to-Earth), 28.35-28.6 GHz (Earth-to-space) and 29.5-30.0 GHz (Earth-to-space) bands*" (emphasis added), should govern only blanket licensed earth stations, and cites to two separate rules applicable to Ku-band earth station licensing – Section 25.134 for routinely licensed VSATs and Section 25.212 for

³⁷ See *Hughes Petition* at 22-23.

³⁸ *Id.* at 23-25.

³⁹ *Id.*

other earth stations.⁴⁰ Hughes's arguments exalt form over substance and are inconsistent with applicable FCC precedent.

Although Hughes correctly notes that two separate provisions govern Ku-band earth station licensing, Hughes neglects to mention that Sections 25.134 and 25.212 contain the very same operational parameters governing Ku-band earth station operations. Thus, the regulatory approach adopted by the Commission in the *18 GHz Order* for Ka-band earth stations – identical operational parameters for blanket licensed and individually licensed earth stations, and the right to coordinate operations in excess of those parameters – is exactly the same as the approach applied in the Ku-band. The Commission acted well within its discretion, for the sake of administrative convenience, to embody Ka-band earth station operational parameters and other requirements in a single rule rather than in two separate provisions.⁴¹

Moreover, Hughes's underlying argument – that is “unacceptable” that individually coordinated earth stations may be required to reduce their power levels if they cannot be coordinated with future applicants or licensees – is contrary to longstanding FCC precedent. The Commission traditionally has conditioned non-compliant earth station operations on coordination with future applicants or licensees and, if no good faith agreement can be reached, the non-compliant licensee must reduce its power levels.⁴² The Commission embodied this requirement

⁴⁰ See *Hughes Petition* at 24 n.73.

⁴¹ If the Commission deemed it necessary, Astrolink would support modification of the title of Section 25.138 to reflect that it applies to both blanket licensed and individually licensed earth stations, or adoption of a separate provision containing the operational parameters and other requirements applicable to individually licensed earth stations, so long as the substantive requirements governing individually licensed earth stations are not altered.

⁴² See, e.g., *USAsia Telecom, LLC*, DA 00-913, 2000 FCC LEXIS 2103 (April 24, 2000) at ¶11; *Williams Communications, Inc. and W4 Communications Corp.*, DA 00-663, File Nos. 482-

for all Ka-band GSO FSS earth stations, whether blanket licensed or individually licensed, in new Section 25.138(c).⁴³

In sum, the Commission properly recognized that both blanket licensed *and* individually licensed earth stations would operate in this GSO FSS spectrum, and crafted new Section 25.138(b) to grant *all* earth stations the flexibility to operate in excess of applicable power levels on an individually coordinated basis. However, cognizant that such non-compliant operations could impact future use of the band, and consistent with longstanding precedent, in Section 25.138(c) the Commission requires licensees of non-compliant earth stations to bear the burden of coordinating with future applicants and licensees – including reducing power levels if no good faith coordination can be reached. Adopting these requirements in a single rule is well within the Commission’s discretion.

Finally, in *ex parte* comments, Teledesic requests the Commission to correct new Section 25.145(i), which erroneously reverses the cut-off dates for grandfathered FS stations in the 18.58-18.8 GHz and 18.8-19.3 GHz bands. Because the dates in 25.145(i) appear to be reversed inadvertently, Astrolink supports the correction requested by Teledesic.

...continued

DSE-MP/L-98 SES-MOD-19980121-00104 SES-AMD-19980715-02115 (rel. March 24, 2000) at ¶11.

⁴³ See *18 GHz Order* at Appendix A (new Section 25.138(c)).

V. CONCLUSION

For all of the foregoing reasons, Astrolink respectfully requests that the Commission take the actions on reconsideration consistent with this Opposition and Comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, do hereby certify that on this 13th day of November, 2000, copies of the foregoing "Opposition and Comments of ASTROLINK International LLC" were sent via first-class mail, postage prepaid to the following:

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